IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6462 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRABEN G CHUDASAMA

Versus

STATE OF GUJARAT

Appearance:

MR AJ YAGNIK for MR GIRISH PATEL for Petitioners

M/S MG DOSHIT & CO for Respondent No. 1

MR JF SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/2000

ORAL JUDGEMENT

In the year 1986, the local limits of the Ahmedabad Municipal Corporation were altered merging certain areas in the periphery of the erstwhile city of Ahmedabad into the Ahmedabad Municipal Corporation. That was done by the Govt. notification dated 5.2.1986 (Annexure "I" to the reply affidavit on behalf of the respondent-Ahmedabad Municipal Corporation). Consequent

upon the said notification, the employees of the Municipalities/Panchayats which were merged with the Ahmedabad Municipal Corporation were to be absorbed in the services of the Corporation subject to certain terms and conditions with which we are not concerned in this petition.

2. The petitioners were working as auxiliary nurse-cum-midwives in Primary Health Centre at Sarkhej under the Ahmedabad District Panchayat. In this petition, the petitioners contended that the area of Sarkhej was merged with the Ahmedabad Municipal Corporation and, therefore, the petitioners were required to be absorbed in the services of the Corporation. In paras 8 and 9 of the petition, the petitioners averred that a joint meeting was held on 3.3.1986 with the Ahmedabad Municipal Corporation and it was decided that the affected employees working with the Health Centres under the District Panchayat should be absorbed in the services of the Ahmedabad Municipal Corporation and that the District Panchayat prepared a list of such employees and sent it to the Corporation and the Corporation asked such employees about their willingness to join the Municipal Corporation in May/June, 1986. It is further averred in the petition that after obtaining consent from the petitioners, the petitioners were made to understand that the they will be absorbed in the services of the Corporation, but they were not informed about the decision of the Corporation and none of the petitioners were served with any such intimation regarding non-absorption. The Ahmedabad District Panchayat, however, passed the impugned order dated 12/16.12.1986 (Annexure "C") whereby there was reshuffling of the duties and areas assigned to the petitioners at Primary Health Centres under the Ahmedabad District Panchayat. The petitioners thereupon filed this petition.

3. Initially, ad-interim relief was granted by this Court while issuing notice restraining the District Panchayat from implementing the order dated 12/16.12.1986 (Annexure "C"). However, after hearing the parties, this Court vacated the ad-interim relief on 15.12.1987 with an observation that the transfers will be without prejudice to the claims of the petitioners in this petition.

4. Affidavit in reply dated 30.11.1997 has been filed by P.U. Asnani, Deputy Municipal Commissioner on the behalf of the Ahmedabad Municipal Corporation contending that the petition is misconceived. The following averments are made in the said affidavit :-

(i) Sarkhej is outside the limits of the Ahmedabad Municipal Corporation even after the [VGovernment Notification dated 5.2.1986. Since Sarkhej is not included within the limits of the Ahmedabad Municipal Corporation, there is no question of the Corporation deciding to run any service in the said area, much less would there be any question of employing any staff there.

(ii) The petitioners are on the establishment of the Ahmedabad District Panchayat and there is no question taking over any staff of the District Panchayat. Hence, the employees employed by the District Panchayat for Primary Health Centres, Malaria Surveillance Work, etc. continue to be employees of the Ahmedabad District Panchayat.

(iii) Only the staff of Gram Panchayats/Nagar Panchayats and Municipalities which have been dissolved upon extension of the limits of the Ahmedabad Municipal Corporation, have been absorbed by the Corporation. The petitioners not being employees of such Gram Panchayats, Nagar Panchayat or Municipalities, the question of absorbing the petitioners did not arise.

(iv) The averments made in paras 8 and 9 are not correct. It is further stated in the reply affidavit as under :-

"In the first place, there is no question of absorbing the petitioners by the Corporation because the said petitioners are not covered by the Government Notification dated 22.2.1986. It is denied that they were called by the Corporation to know their willingness. The petitioners have deliberately and conveniently remained silent as to who in the Corporation called them for the purpose because it is obvious that a public body cannot function except through its officers. The petitioners have not mentioned as to which officer competent to take decision called them for the purpose. It is denied that any officer competent to take the decision called them for the purpose."

5. Earlier affidavit in reply also appears to have been filed by Dr H.J. Gagiani, District Health Officer, District Panchayat on behalf of respondent Nos. 2 and 3 pointing out that the petitioners continued to be employees of the Ahmedabad District Panchayat although

the areas of their work were transferred to the Corporation from 23.2.1986. However, no final decision is taken. However, it is stated in the said affidavit that the petitioners held transferable posts and that transfer being an incidence of service, the District Panchayat passed transfer orders after mature consideration and in public interest.

6. It appears that the affidavit of the District Panchayat proceeded on the footing that Sarkhej village was merged with the Corporation but it is asserted in the reply affidavit filed on behalf of the District Panchayat that the Primary Health Centre of Sarkhej is still continued to be run by the Ahmedabad District Panchayat alongwith its other centres except those which had merged with the Corporation.

6. In view of the affidavit dated 30.11.1997 filed by the Deputy Municipal Commissioner on behalf of the Ahmedabad Municipal Corporation and on a perusal of the Govt. Notification dated 5.2.1986 annexed to the said affidavit, it is clear that Sarkhej is not included within the local limits of the Ahmedabad Municipal Corporation. Hence, the entire basis of the petition fails and the petition is misconceived.

The challenge to the impugned order dated 12/16.12.1986 (Annexure "C") is also misconceived. So long as the petitioners are the employees of the Ahmedabad District Panchayat, they are liable to be transferred and nothing is shown as to how such transfer can be considered to be illegal.

7. In view of the above, the petition deserves to be dismissed and is accordingly dismissed.

Rule is discharged. There shall be no order as to costs.

June 23, 2000 (M.S. Shah, J.)
sundar/-